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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,041	12/20/2001	James J. Conroy	CONROY	1821

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EXAMINER

ARK, DARREN W

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 11/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/034,041	CONROY, JAMES J.
Examiner	Art Unit	
Darren W. Ark	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 07 October 2002 .

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-10 is/are pending in the application.

4a) Of the above claim(s) 3-6 and 8 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1,2,7,9 and 10 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 20 December 2001 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)      4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.      6)  Other: \_\_\_\_\_

**DETAILED ACTION*****Election/Restrictions***

1. Claims 3-6 and 8 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 4.
2. Applicant's election with traverse of Species V in Paper No. 4 is acknowledged. The traversal is on the ground(s) that "It is believed that any search for a insecticide dispensing device as shown in FIGS. 2C and 2D would include a search for an insecticide dispensing device in FIGS. 1A, 1B, 1C, 1D, 2A, 2B, and 3A and 3B...". This is not found persuasive because each of the embodiments shown in the FIGS. 1A, 1B, 1C, 1D, 2A, 2B, and 3A and 3B have respective features not required in the search for the embodiment disclosed in FIGS. 2C and 2D. For example, FIGS. 1A and 1B require a base with a polygonal cross section not required in Species V represented in Figs. 2C and 2D. Also for example, the embodiment of Figs. 3A and 3B require an internal chamber, a series of conduits, and a series of holes that are not required in the embodiment of Species V. If applicant is traversing on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions

unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

The requirement is still deemed proper and is therefore made FINAL.

### ***Drawings***

3. The drawings are objected to because Figs. 2A and 2B do not clearly represent the different views of Fig. 1A. The channels in Fig. 2A do not appear to be in the correct position with regard to the single channels extending along the sides of the triangular cross section of Fig. 1A (Fig. 2A shows two channels on a single side of the device which is not an accurate representation). Fig. 2B does accurately show the configuration of the first embodiment since in Fig. 1A the channels (22) are shown extending along the middle of the sides of the device whereas Fig. 2B shows the channel extending in a crooked fashion (it is unclear what Fig. 2B is intended to show). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to because Figs. . A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Specification***

5. The disclosure is objected to because of the following informalities:

Page 4, lines 7 & 8, it is unclear how Fig. 2B illustrates the first embodiment receiving an injection of insecticide since there are no other parts/accessories in the Figure used in the filling process.

Page 4, lines 11 & 12, Fig. 2D is not a cross sectional view of Fig. 2C and is instead an entirely different embodiment with a “football” shape.

Page 4, lines 13 & 14, Fig. 3A is not a perspective view and instead appears to be a cross sectional view similar to Figs. 1A-D.

Page 4, lines 15 & 16, Fig. 3B is not a cross sectional view since there are external details of the device which are shown on the exposed sides (protrusions 20) and also since there is no line 3-3 in Fig. 3A; it appears to be a different polygonal embodiment.

Page 5, lines 3 & 4, Figs. 2A-D do not necessarily illustrate the side views for each of the respective Figs. 1A-D (there is no side view of Fig. 1B or 1D).

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 7, 9, 10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Greenway 1,471,954.

Greenway discloses a base (10); at least one crevasse (hollow portion of 10 [hollow portion of 10 extends along the long axis] or 11); a plurality of protrusions (12, point of 11, 13).

8. Claims 1, 2, 7, 9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kristman 1,922,702.

Kristman discloses a base (A, B); at least one crevasse (portion of A); a plurality of protrusions (3).

9. Claims 1, 2, 7, 9, 10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Davis 1,744,022.

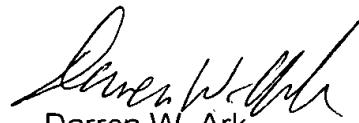
Davis discloses a base (2); at least one crevasse (hollow portion of 2); a plurality of protrusions (14).

Art Unit: 3643

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M, T, Th, & F, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 306-4195 for regular communications and (703) 306-4195 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



Darren W. Ark  
Primary Examiner  
Art Unit 3643

DWA   
November 18, 2002